UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

ROBERTS TECHNOLOGY GROUP, INC.	:	
	:	**CIVIL ACTION**
Plaintiff,	:	
v.	:	**No. 14-5677**
CURWOOD, INC.	:	
Defendant.	:	

PLAINTIFF ROBERTS TECHNOLOGY GROUP, INC.'S
PROPOSED JURY INSTRUCTIONS ON SUBSTANTIVE ISSUES

Pursuant to Paragraph 4 of the Court's April 1, 2016 Order (Doc. No. 157), Plaintiff, Robert's Technology Group, Inc. ("RTG"), respectfully requests that the Court charge the jury in the above-captioned action with the following substantive instructions. Plaintiff reserves the right to amend, alter and/or modify these instructions up to and through the time of trial, to the extent permitted by the Court.

Respectfully submitted,

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EFFECT OF BREACH—MATERIALITY

(Pennsylvania Suggested Standard Civil Jury Charges 19.120)

It has already been determined that Defendant materially breached its contracts with RTG. As a result, you must adequately compensate RTG for those breaches.

BREACH OF CONTRACT DAMAGES—GENERALLY

(Pennsylvania Suggested Standard Civil Jury Charges 19.260)

[Defendant has breached their contract with Plaintiff, therefore, Plaintiff may] recover for those injuries that have been proven to you with reasonable certainty. Any compensation awarded for injury is termed "damages."

Generally, the measure of damages is the sum that will compensate the plaintiff for the loss sustained. [Because it has already been proven that Defendant has breached its contract with Plaintiff,] you must decide, based on the evidence the plaintiff has presented, what amount of money will compensate RTG for those injuries that were a direct and foreseeable result of the breach, and that the parties could have reasonably foreseen with certainty at the time they made the contract.

DAMAGES—EXPECTATION INTEREST—LOST BENEFIT OF THE BARGAIN

(Pennsylvania Suggested Standard Civil Jury Charges 19.270)

[Because it has already been proven that Defendant breached its contract with Plaintiff,] you must decide, based on the evidence that RTG has presented, the amount of money damages that will compensate RTG for its loss as a result of the breach. Your aim in calculating this amount should be to put RTG, as nearly as possible, in the same position it would have occupied had the contract been performed.

In determining this amount, you should remember that RTG is also entitled to be reimbursed for the money it actually paid out, in addition to all reasonable and proper expenses incurred as a result of its reliance on the contract.

EXISTENCE OF A CONTRACT

(Pennsylvania Suggested Standard Civil Jury Instructions (4th ed. 2015), Vol. II, Ch. 19, Section 19.00)

The parties had a legally enforceable agreement. That means there was an agreement between two or more competent parties who each promised to do, or refrain from doing, some lawful act. Whether oral or written, a contract is enforceable if its It has already been determined that the contract/agreement clearly expressed what each party intended and expected.

It has already been determined that the elements to a contract – offer, acceptance, and consideration – were proven by RTG.

It has already been determined that RTG and Curwood entered into a valid contract in this matter and all of these elements have been proven.

EXISTENCE OF A CONTRACT - MEETING OF THE MINDS

(Mazzella v. Koken, 739 A.2d 531, 536 (Pa. 1999);
Greene v. Oliver Realty, Inc., 526 A.2d 1192, 1194 (Pa. Super. 1987).)

In order for a contract to exist, there must have been a meeting of the minds by the parties as to all essential terms of the contract. Where a contract includes a term that is ambiguous and indefinite, and the surrounding circumstances do not provide enough information to make a conclusion about the meaning of the indefinite term, you may conclude that there was no meeting of the minds and the contract fails for reason of its indefiniteness as to an essential term.

It has been determined that RTG and Curwood had a meeting of the minds with respect to the terms of this contract.

EXISTENCE OF A CONTRACT – OFFER

(Pennsylvania Suggested Standard Civil Jury Instructions (4th ed. 2015), Vol. II, Ch. 19, Section 19.00.)

A valid offer expresses a willingness to enter in a contract. The offer gives someone else the power to create the contract by making a valid acceptance of the offer and thereby "sealing the deal." In determining whether something was intended to be an actual offer, it must be examined in context, and it must be examined in light of the surrounding circumstances. You may find that one party's actions did constitute an offer when you consider custom established in a particular trade or business, the relation between the parties, and prior dealings between the parties.

The offer must create the power to accept, and thereby create a binding contract. Other statements may be mistaken for an offer. Some of these include:

1. An expression of intent to do something in the future;

2. A request for bids, or invitations for others to make offers;

3. An invitation to negotiate, such as "would you consider selling that?";

4. A statement that a reasonable person would realize was not made in seriousness; and

5. An "offer" made by an incompetent person is not a valid offer.

It has already been proven that RTG offered to pay Curwood to distribute Curwood's trays to the customers identified during this proceeding and that Curwood accepted this offer, agreeing to manufacture those trays and only allow those trays to be distributed to the customers by RTG.

EXISTENCE OF A CONTRACT - ACCEPTANCE

(Pennsylvania Suggested Standard Civil Jury Instructions (4th ed. 2015), Vol. II, Ch. 19, Section 19.00.)

An acceptance is a clear indication that one agrees to be bound by the terms of the offer. The acceptance must be given within the time specified by the offer, or within a reasonable time if none is specified. The person to whom the offer was directed is the only person who may accept the offer.

If the parties have had previous dealings whereby certain methods of acceptance have become customary between them, then such will constitute a valid acceptance. An example of this would be a beginning of the requested performance upon receipt of the offer, rather than sending notice of acceptance of the offer first.

An acceptance must not change the terms of the offer, or impose any additional conditions. If it does change the terms of the offer, it will be considered a counter-offer, rather than an acceptance, and will therefore not create a contract.

It has already been determined that Curwood accepted each of the offers RTG made on Curwood lead distribution forms, by approving the terms RTG proposed in those forms without changing any of RTG's proposed terms.

EXISTENCE OF A CONTRACT – CONSIDERATION

(Pennsylvania Suggested Standard Civil Jury Instructions (4th ed. 2015), Vol. II, Ch. 19, Section 19.00.)

There must be consideration given by each party to a valid contract. That is, each party must have bargained to exchange his or her promise for another. The exchanged promises are either promises to perform or promises not to perform some act. The value or adequacy of the consideration given will not usually be examined, but the circumstances that show that both parties were capable of bargaining will be examined. In that sense, competent people are free to contract, and even if one makes a bad deal, he or she is bound by the agreement.

It has already been determined that RTG and Curwood exchanged promises to perform under the terms stated in each of the lead distribution forms, which establishes that there was consideration for this contract.

CONTRACTS – PRESUMPTION THAT MAY BE TERMINATED AT WILL

(Seneca Falls Mach. Co. v. McBeth, 368 F.2d 915, 917 (3d. Cir. 1966); King of Prussia Equip. Corp. v. Power Chubers, Inc., 117 F. App'x 173, 175 (3d Cir. 2004); Norris Sales Co. v. Target Division of Diamant Boart, Inc., 2002 WL 31771169, at *3 (E.D. Pa. Dec. 11, 2002).)

It has already been determined that the contract between RTG and Curwood was not terminated prior to November 2015.

BREACH OF CONTRACT

(Pennsylvania Suggested Standard Civil Jury Instructions (4th ed. 2015), Vol. II, Ch. 19, Section 19.60-70.)

A breach of contract occurs when a party to the contract fails to perform a contractual duty of immediate performance or violates an obligation, engagement, or duty and that breach is material. A breach does not have to be defined in a contract.

It has already been determined that the parties had mutual agreements where each party's performance was dependent on the other.

It has also been determined that Curwood failed to perform its part under the contracts, and was therefore in breach of each of its contracts with RTG causing RTG to suffer damages.

CERTIFICATION OF SERVICE

I hereby certify that on April 28, 2016, I served a copy of the forgoing *Robert's Technology Group. Inc.'s Proposed Jury Instructions on Substantive Issues* upon the following via the Court's electronic filing system:

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DATED: April 28, 2016

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